



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 79**

**[MB Docket No. 12-108; FCC 15-156]**

Accessibility of User Interfaces, and Video Programming Guides and Menus

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts additional rules under the authority of Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), which mandate the accessibility of user interfaces on digital apparatus and navigation devices used to view video programming. First, the document adopts usability requirements for entities covered by Section 204 of the CVAA and information, documentation, and training requirements for entities covered by both Section 204 and Section 205 of the CVAA. The document also adopts rules that will require manufacturers of digital apparatus and navigation devices to publicize the availability of accessible devices on manufacturer websites that must be accessible to those with disabilities. These requirements will ensure that individuals with disabilities have access to information and documentation about the availability of accessible video devices and how to operate them. The document declines to adopt a requirement that multichannel video programming providers include more detailed program information for public, educational, and governmental channels in their video programming guides, finding that such a requirement is outside the scope of Section 205 of the CVAA. Finally, the document reconsiders guidance on which activation mechanisms for closed captioning are reasonably comparable to a button, key, or icon.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATIONS IN THE FEDERAL REGISTER], except for §§ 79.107(a)(5), (d), and (e) and 79.108(d)(2) and (f), which contain information collection requirements subject to approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

**FOR FURTHER INFORMATION CONTACT:** Maria Mullarkey, Maria.Mullarkey@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at (202) 418-2918 or send an email to PRA@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Report and Order and Order on Reconsideration, FCC 15-156, adopted on November 18, 2015, and released on November 20, 2015. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) Web Site at [http://fjallfoss.fcc.gov/edocs\\_public/](http://fjallfoss.fcc.gov/edocs_public/) or via the FCC's Electronic Comment Filing System (ECFS) Web Site at <http://fjallfoss.fcc.gov/ecfs2/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

## **I. INTRODUCTION**

1. In October 2013, the Commission adopted rules that advance the important goal

of making video programming accessible to individuals with disabilities on a wide range of consumer devices, allowing consumers who are blind or visually impaired and deaf or hard of hearing to more fully enjoy the benefits of such programming. In this Second Report and Order (Order) and Order on Reconsideration, we take additional steps to fulfill this goal by continuing the Commission’s implementation of Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), which mandate the accessibility of user interfaces on digital apparatus and navigation devices used to view video programming.<sup>1</sup>

2. This Order addresses three areas in which the Commission sought comment in the Further Notice of Proposed Rulemaking (“Further NPRM”) that accompanied the first Report and Order issued in this proceeding.<sup>2</sup> First, it implements Section 204’s requirement that both the “appropriate built-in apparatus functions” and the “on-screen text menus or other visual indicators built in to the digital apparatus” to access such functions be “usable by individuals who are blind or visually impaired”<sup>3</sup> by relying on the Commission’s existing definition of “usable” in Section 6.3(l) of our rules.<sup>4</sup> In addition, it adopts information, documentation, and training requirements comparable to those in Section 6.11 of our rules for entities covered by

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<sup>1</sup> Pub. L. 111-260, 124 Stat. 2751 (2010) (as codified at 47 U.S.C. 303(aa), 303(bb)). See also Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA). The foregoing are collectively referred to herein as the CVAA.

<sup>2</sup> Accessibility of User Interfaces, and Video Programming Guides and Menus; Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket Nos. 12-108, 12-107, Report and Order and Further Notice of Proposed Rulemaking, 78 FR 77210, 78 FR 77074, paras. 138-52 (2013) (“Report and Order and Further NPRM”). The Commission also inquired in the Further NPRM whether to require manufacturers of apparatus covered by Section 203 of the CVAA to provide access to the secondary audio stream for audible emergency information by a mechanism reasonably comparable to a button, key, or icon. *Id.* at paras. 145-47. The Commission addressed this issue in a recent order in MB Docket No. 12-107. See Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 12-107, Second Report and Order and Second Further Notice of Proposed Rulemaking, 80 FR 39698, 80 FR 39722 (2015).

<sup>3</sup> 47 U.S.C. 303(aa)(1)-(2).

<sup>4</sup> 47 CFR 6.3(l).

both Section 204 and Section 205 of the CVAA.<sup>5</sup> Second, it adopts consumer notification requirements for equipment manufacturers of digital apparatus and navigation devices that will require manufacturers to publicize the availability of accessible devices on manufacturer websites that must be accessible to those with disabilities. While multichannel video programming distributors (“MVPDs”) are already subject to website notification requirements pursuant to the rules we adopted in the Report and Order, the Order also requires MVPDs, as well as manufacturers, to ensure that the contact office or person listed on their website is able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features. Finally, the Order declines to adopt a requirement that MVPDs include more detailed program information for public, educational, and governmental (“PEG”) channels in their video programming guides, finding that such a requirement is outside the scope of Section 205 of the CVAA.

3. Addressing a Petition for Reconsideration filed by several consumer and academic organizations,<sup>6</sup> the Order on Reconsideration modifies our decision in the Report and Order by finding that, when a voice control is the sole means of activation for closed captioning, it will not be considered “reasonably comparable to a button, key, or icon” under Sections 204 or 205 due to the difficulty many people who are deaf and hard of hearing would encounter in using

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<sup>5</sup> Id. § 6.11.

<sup>6</sup> Petition for Reconsideration of the National Association of the Deaf, Telecommunications for the Deaf and Hard of Hearing, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Association of Late-Deafened Adults, Inc., Hearing Loss Association of America, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Cerebral Palsy and Deaf Organization, Technology Access Program Gallaudet University, filed Jan. 20, 2014 (“Consumer/Academic Groups Petition”). A substantially similar group of organizations, which included Telecommunication-RERC, but not Technology Access Program Gallaudet University, filed comments and reply comments in response to the Further NPRM (“Consumer/Academic Groups Comments” and “Consumer/Academic Groups Reply”). Hereinafter, both groups of organizations will be collectively referred to as the “Consumer/Academic Groups.”

such an activation mechanism. At the same time, the Order finds that closed captioning and video description activation mechanisms relying on gesture control will be considered “reasonably comparable to a button, key, or icon” if they are simple and easy to use.

## II. BACKGROUND

4. Among the CVAA’s mandates is a requirement that the Commission adopt rules to ensure the accessibility of the user interfaces and video programming guides and menus for digital apparatus and navigation devices.<sup>7</sup> The CVAA also required the Commission to establish an advisory committee known as the Video Programming Accessibility Advisory Committee (“VPAAC”),<sup>8</sup> which submitted its statutorily mandated report addressing user interfaces and video programming guides and menus to the Commission on April 9, 2012.<sup>9</sup> The Commission issued an NPRM in this proceeding on May 30, 2013,<sup>10</sup> and adopted the Report and Order and Further NPRM on October 29, 2013. In the NPRM and the Report and Order, the Commission provided extensive background information regarding the history of the applicable provisions of the CVAA and the VPAAC Second Report: User Interfaces.<sup>11</sup> The Report and Order and Further NPRM were published in the Federal Register on December 20, 2013.<sup>12</sup> Covered entities must

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<sup>7</sup> Pub. L. 111-260, secs. 204, 205.

<sup>8</sup> Id. at sec. 201(e)(2). Section 201(e)(2) of the CVAA also required the report to include information related to the provision of emergency information and video description, which is part of a separate Commission rulemaking proceeding that addresses Sections 202 and 203 of the CVAA. See Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket Nos. 12-107, 11-43, Report and Order and Further Notice of Proposed Rulemaking, 78 FR 31800, 78 FR 31769 (2013) (“Emergency Information/Video Description Order”).

<sup>9</sup> Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010: User Interfaces, and Video Programming Guides and Menus, Apr. 9, 2012, available at <http://apps.fcc.gov/ecfs/document/view?id=7021913531> (“VPAAC Second Report: User Interfaces”).

<sup>10</sup> See Accessibility of User Interfaces, and Video Programming Guides and Menus, MB Docket No. 12-108, Notice of Proposed Rulemaking, 78 FR 36478 (2013) (“NPRM”).

<sup>11</sup> NPRM, paras. 2-4; Report and Order and Further NPRM, paras. 8-11.

<sup>12</sup> Federal Communications Commission, 47 CFR part 79, Accessibility of User Interfaces, and Video Programming Guides and Menus, Final Rule, 78 FR 77210 (Dec. 20, 2013); Federal Communications Commission, 47 CFR part 79, Accessibility of User Interfaces, and Video Programming Guides and Menus; Accessible Emergency

comply with the rules adopted in the Report and Order by December 20, 2016, subject to certain exceptions.<sup>13</sup> Consumer/Academic Groups filed a timely petition for reconsideration within 30 days of the Federal Register publication date.<sup>14</sup>

### **III. SECOND REPORT AND ORDER**

#### **A. Usability and Information, Documentation, and Training Requirements**

5. Section 204 Digital Apparatus. We will rely on the Commission's existing definition of "usable" in Section 6.3(l) of our rules to implement Section 204's requirement that both the "appropriate built-in apparatus functions" and "on-screen text menus or other visual indicators built in to the digital apparatus" to access such functions be "usable by individuals who are blind or visually impaired."<sup>15</sup> Consistent with the language in Section 204 of the CVAA, the Commission required in the Report and Order that covered digital apparatus, "if achievable . . . be designed, developed, and fabricated so that control of appropriate built-in apparatus functions are accessible to and usable by individuals who are blind or visually impaired."<sup>16</sup> The Commission also required, as mandated by Section 204 of the CVAA, that on-screen text menus or other visual indicators used to access the appropriate built-in apparatus functions "be accompanied by audio output . . . so that such menus or indicators are accessible to

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Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Proposed Rule, 78 FR 77074 (Dec. 20, 2013).

<sup>13</sup> See 47 CFR 79.107(b), 79.108(b), 79.109(c). See also Report and Order and Further NPRM, paras. 111-19.

<sup>14</sup> 47 CFR 1.429(d). The Consumer Electronics Association, Entertainment Software Association, National Cable & Telecommunications Association, and Telecommunications Industry Association each filed oppositions to the Petition for Reconsideration, and Consumer/Academic Groups filed a reply.

<sup>15</sup> 47 U.S.C. 303(aa)(1)-(2).

<sup>16</sup> Report and Order and Further NPRM, para. 53. The appropriate built-in apparatus functions are those that are used for the reception, play back, or display of video programming and, at this time, include the following functions: power on/off; volume adjust and mute; channel/program selection; display channel/program information; configuration—setup; configuration—CC control; configuration—CC options; configuration—video description control; display configuration info; playback functions; and input selection. *Id.* at para. 58; 47 CFR 79.107(a)(4)(i)-(xi). The Commission has stated that it "may revisit this list if and when technology evolves to a point where devices incorporate new user functions related to video programming that were not contemplated by the VPAAC." Report and Order and Further NPRM, para. 59.

and usable by individuals who are blind or visually impaired in real-time.”<sup>17</sup> While the Report and Order specified accessibility requirements, i.e., how covered entities should make the appropriate built-in functions “accessible,” the Further NPRM sought comment on usability requirements, i.e., how covered entities should make the appropriate built-in functions “usable.”<sup>18</sup> Specifically, the Further NPRM inquired whether to adopt the definition of “usable” set forth in Section 6.3(l) of our rules and whether to impose information, documentation, and training requirements consistent with those set forth in Section 6.11 of our rules.<sup>19</sup>

6. Relying on the existing definition of usability in Section 6.3(l), we require manufacturers of Section 204 digital apparatus to ensure that individuals with disabilities have access to information and documentation on the full functionalities of digital apparatus, including instructions, product information (including accessible feature information), documentation, bills, and technical support which are provided to individuals without disabilities.<sup>20</sup> Industry and academic commenters were united in their support of our proposal to rely on the Section 6.3(l) usable definition to implement Section 204.<sup>21</sup> As the Further NPRM stated, the Commission has relied on the Section 6.3(l) definition in other CVAA contexts,<sup>22</sup> and, given the agreement in the record on this point, we see no reason to depart from that approach here. The Consumer Electronics Association (“CEA”) asks that we “clarify” that application of

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<sup>17</sup> Report and Order and Further NPRM, para. 53.

<sup>18</sup> Id. at para. 138.

<sup>19</sup> Id. at paras. 138-39.

<sup>20</sup> 47 CFR 6.3(l). The Commission adopted the definition of “usable” in Section 6.3(l) of its rules pursuant to Section 255 of the Communications Act of 1934, as amended, which requires telecommunications providers and equipment manufacturers to make their products “accessible to and usable by” persons with disabilities. See Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, paras. 21-29 (1999).

<sup>21</sup> See Comments of the Consumer Electronics Association at 2-3 (“CEA Comments”); Comments of DISH Network L.L.C. and EchoStar Technologies L.L.C. at 2 (“DISH/EchoStar Comments”); Reply Comments of Rehabilitation Engineering Research Center for Wireless Technologies at 4 (“Wireless RERC Reply”).

<sup>22</sup> Report and Order and Further NPRM, para. 138 (discussing the Commission’s reliance on the Section 6.3(l) usable definition when implementing Sections 255, 716, and 718 of the Communications Act).

the usability requirement under Section 204 to the “appropriate” built-in functions of covered digital apparatus only applies “to the extent the apparatus includes those functions.”<sup>23</sup> We agree with CEA that such an approach would be consistent with the Commission’s approach in the Report and Order and adopt it here. Under the standard set forth in the Report and Order when implementing Section 204, a digital apparatus manufacturer is required to make an “appropriate built-in apparatus function” of a digital apparatus accessible only to the extent such function is “included in the device.”<sup>24</sup> Similarly, a digital apparatus manufacturer will be required under Section 204 to make usable an “appropriate built-in apparatus function”<sup>25</sup> or an on-screen text menu or other visual indicator that is used to access such function<sup>26</sup> only to the extent it is included in the device.

7. In addition to implementing the usability requirement of Section 204, we also adopt information, documentation, and training requirements consistent with those set forth in Section 6.11 of our rules. As noted in the Further NPRM, the Commission “adopted information, documentation, and training requirements when implementing Sections 716 and 718” of the Communications Act of 1934, as amended (“Act”),<sup>27</sup> which impose accessibility requirements on providers and manufacturers with respect to advanced communications services and equipment and Internet browsers on mobile phones and, like Section 204, require that covered products be “accessible to and usable by” individuals with disabilities.<sup>28</sup> Section 6.11

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<sup>23</sup> CEA Comments at 3.

<sup>24</sup> Report and Order and Further NPRM, para. 58. See also *id.* at para. 60 (“[A]n apparatus covered by Section 204 is not required to include all 11 functions deemed to be ‘appropriate,’ understanding that some of these functions may not be provided for any users on certain devices. We agree with commenters that Section 204 ‘do[es] not mandate the inclusion of any specific functions’ in the design of a covered apparatus. However, to the extent that an apparatus is designed to include an ‘appropriate’ built-in apparatus function, such function must be made accessible in accordance with our rules.”) (citations omitted).

<sup>25</sup> 47 U.S.C. 303(aa)(1).

<sup>26</sup> *Id.* at sec. 303(aa)(2).

<sup>27</sup> *Id.* at secs. 617, 619. See also Pub. L. 111-260, sec. 104 (adding Sections 716 and 718 of the Act).

<sup>28</sup> Report and Order and Further NPRM, para. 139; 47 CFR 14.20(d).



requires that manufacturers ensure access to information and documentation it provides to its customers.<sup>29</sup> Such information and documentation includes user guides, bills, installation guides for end-user installable devices, and product support communications, regarding both the product in general and the accessibility features of the product.<sup>30</sup> In addition, Section 6.11 requires manufacturers to include the contact method for obtaining the information required by Section 6.11(a) in general product information, to consider certain accessibility-related topics when developing or modifying training programs, and to take other steps, as necessary.<sup>31</sup> We agree with the Rehabilitation Engineering Research Center for Wireless Technologies (“Wireless RERC”) that imposing these requirements in this context as well will provide a consistent experience for individuals with disabilities regardless of the product they are purchasing.<sup>32</sup>

8. We disagree with the argument made by CEA and DISH Network L.L.C./EchoStar Technologies L.L.C. (“DISH/EchoStar”) that imposing information, documentation, and training requirements will be redundant with the usability requirements in Section 6.3(l) that we adopt herein.<sup>33</sup> While Section 6.3(l) provides a definition of usability in the definitional section of our rules, Section 6.11 outlines the specific actions that covered entities must take to provide access by people with disabilities to information and documentation, as well as information to be considered for inclusion in an appropriate manufacturer training program.<sup>34</sup> Thus, for example, Section 6.11 directs manufacturers to provide access to user guides, bills, installation guides and product support communications.<sup>35</sup>

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<sup>29</sup> 47 CFR 6.11(a).

<sup>30</sup> Id.

<sup>31</sup> Id. § 6.11(a)-(c).

<sup>32</sup> See Wireless RERC Reply at 4. See also Comments of Verizon and Verizon Wireless at 3 (“Verizon Comments”).

<sup>33</sup> CEA Comments at 4; Reply Comments of the Consumer Electronics Association at 8-9 (“CEA Reply”); DISH/EchoStar Comments at 3.

<sup>34</sup> 47 CFR 6.11.

<sup>35</sup> Id. § 6.11(a).

In addition, it directs manufacturers to provide a description of the accessibility and compatibility features of the product upon request, including, as needed, in alternate formats or alternate modes at no additional charge,<sup>36</sup> and to ensure usable customer and technical support in call centers and service centers at no additional charge.<sup>37</sup> With respect to training, Section 6.11 states that manufacturers shall consider various topics, including the accessibility requirements of, and means of communicating with, people with disabilities; adaptive technology commonly used by people with disabilities; and designs and solutions for accessibility.<sup>38</sup> Therefore, we find that the information, documentation, and training requirements found in Section 6.11 are not redundant with the usability requirements in Section 6.3(l), but set forth a more specific set of obligations to which the manufacturers of Section 204 apparatus must adhere. Thus, we apply these requirements to entities covered by Section 204.

9. Section 205 Navigation Devices. We also adopt the information, documentation, and training requirements outlined in Section 6.11 of our rules as part of entities' obligations under Section 205. In the Further NPRM, we inquired whether we should impose Section 6.11 information, documentation, and training requirements on entities covered by Section 205, which applies to navigation devices, pursuant to our authority to "prescribe such regulations as are necessary to implement" the requirements of that section.<sup>39</sup>

10. We find that Section 205 of the CVAA provides the Commission with sufficient authority to adopt information, documentation, and training requirements. CEA, the National Cable & Telecommunications Association ("NCTA"), and the American Cable Association ("ACA") point out that Section 205 does not include the Section 204 "accessible to and usable

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<sup>36</sup> Id. § 6.11(a)(1). Similarly, manufacturers must provide end-user product documentation in alternate formats or alternate modes upon request at no additional charge. Id. § 6.11(a)(2).

<sup>37</sup> Id. § 6.11(a)(3).

<sup>38</sup> Id. § 6.11(c).

<sup>39</sup> Report and Order and Further NPRM, para. 139. See also Pub. L. 111-260, sec. 205(b)(1).

by” language that the Commission has relied upon in the past to adopt information, documentation, and training requirements and, therefore, they question the Commission’s statutory authority to adopt such requirements in the Section 205 context.<sup>40</sup> We disagree with industry’s arguments. Section 205 requires that on-screen text menus and guides provided by navigation devices are “audibly accessible” by individuals who are blind or visually impaired.<sup>41</sup> In addition, Section 205(b)(1) empowers the Commission to “prescribe such regulations as are necessary to implement” the requirements of Section 205.<sup>42</sup> If consumers do not know how to access a feature then, as a practical matter, it is not “accessible.”<sup>43</sup> Information, documentation, and training requirements are thus necessary for individuals with disabilities to be able to operate navigation devices that are made accessible in accordance with the requirements of Section 205. As described above, such requirements ensure that persons with disabilities are provided with accessible product information and documentation, such as user guides, bills, installation guides, and product support communications, with a description of the accessibility features of the device upon request,<sup>44</sup> and with customer and technical support in call centers and service centers.<sup>45</sup> While we note that under the rule, covered entities are required to provide a description of accessibility features and product documentation “upon request” by the

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<sup>40</sup> See CEA Comments at 5; CEA Reply at 9. See also Comments of the National Cable & Telecommunications Association at 7 (“NCTA Comments”); Reply Comments of the National Cable & Telecommunications Association at 8 (“NCTA Reply”); Reply Comments of the American Cable Association at 3-4 (“ACA Reply”).

<sup>41</sup> 47 U.S.C. 303(bb)(1).

<sup>42</sup> See Pub. L. 111-260, sec. 205(b)(1). See also Report and Order and Further NPRM, para. 139.

<sup>43</sup> For these reasons, we reject ACA’s argument that the Commission cannot rely on its authority to “prescribe such regulations as are necessary to implement” the requirements of Section 205 to adopt information, documentation, and training requirements, or that imposing such a requirement would lead to an inconsistent interpretation of the CVAA. See ACA Reply at 4 & n. 10.

<sup>44</sup> Specifically, Section 6.11(a) requires covered entities to provide a description of the accessibility and compatibility features of the product upon request, including, as needed, in alternate formats or alternate modes at no additional charge, and to provide end-user product documentation in alternate formats or alternate modes upon request at no additional charge. 47 CFR 6.11(a)(1)-(2).

<sup>45</sup> Id. § 6.11(a)(1)-(3).

consumer,<sup>46</sup> we will treat a consumer's request for an accessible navigation device pursuant to Section 205 to also constitute a request for a description of the accessibility features of the device and end-user product documentation in accessible formats so that the consumer is able to operate the device. Such requirements also ensure that manufacturers and service providers consider various accessibility-related topics when designing training programs.<sup>47</sup> We believe that these requirements are necessary for individuals with disabilities to have access to the accessibility features and functionality of Section 205 accessible navigation devices and to fully obtain the benefits of these devices.<sup>48</sup> While these requirements broadly outline the steps covered entities must take to ensure access to information, documentation, and training for persons with disabilities, covered entities have flexibility to implement these requirements within the guidelines set forth in the rule.

11. Further, we disagree with CEA, NCTA, and DISH/EchoStar's argument that information, documentation, and training requirements will not be necessary because Section 205 navigation devices are provided upon request and the notification requirements already adopted under Section 205 in the Report and Order will be sufficient to ensure that consumers are able to obtain accessible navigation devices.<sup>49</sup> Those notification requirements focus on ensuring that consumers with disabilities are provided with information about the availability of accessible navigation devices and how to obtain such devices.<sup>50</sup> In contrast, the information,

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<sup>46</sup> Id. § 6.11(a)(1)-(2).

<sup>47</sup> Id. § 6.11(c).

<sup>48</sup> See Wireless RERC Reply at 4-5.

<sup>49</sup> See CEA Comments at 5; CEA Reply at 8; DISH/EchoStar Comments at 3-4; NCTA Comments at 7-8; NCTA Reply at 8.

<sup>50</sup> Under Section 205, MVPDs must notify consumers that navigation devices with the required accessibility features are available to consumers who are blind or visually impaired upon request. 47 CFR 79.108(d). Specifically, when providing information about equipment options in response to a consumer inquiry about service, accessibility, or other issues, MVPDs must clearly and conspicuously inform consumers about the availability of accessible navigation devices. Id. § 79.108(d)(1). In addition, MVPDs must provide notice on their official websites about the availability of accessible navigation devices. Id. § 79.108(d)(2).

documentation, and training requirements that we adopt herein focus on ensuring that consumers with disabilities are provided with information about how to operate the accessibility features and functions of such devices in an accessible format and are provided with appropriate customer support for such devices. Thus, we find that the notification requirements already adopted in the Report and Order do not obviate the need for adopting information, documentation, and training requirements as set forth in Section 6.11, and we apply these requirements to entities covered by Section 205.

12. Achievability. We find that the usability requirement applicable to Section 204 devices and the information, documentation, and training requirements applicable to Section 204 and 205 devices adopted herein apply only “if achievable,” meaning “with reasonable effort or expense, as determined by the Commission.”<sup>51</sup> Section 303(aa)(1) of the Act indicates that apparatus covered by Section 204 are required to make appropriate built-in apparatus functions accessible to and usable by individuals who are blind or visually impaired only “if achievable.”<sup>52</sup> Similarly, Section 303(bb)(1) requires on-screen text menus and guides for the display or selection of multichannel video programming on navigation devices covered by Section 205 to be audibly accessible by individuals who are blind or visually impaired only “if achievable.”<sup>53</sup> The Commission will determine whether compliance is “achievable” on a case-by-case basis, consistent with the approach adopted in the Report and Order.<sup>54</sup> In particular, the Commission will consider the following factors in determining whether compliance with the usability and information, documentation, and training requirements are achievable in particular circumstances: (1) the nature and cost of the steps needed to meet the requirements of this

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<sup>51</sup> See 47 U.S.C. 303(aa)(1), 303(bb)(1); 47 CFR 79.107(c), 79.108(c); Report and Order and Further NPRM, para. 77 (citing 47 U.S.C. 617(g)).

<sup>52</sup> 47 U.S.C. 303(aa)(1).

<sup>53</sup> Id. at sec. 303(bb)(1).

<sup>54</sup> See Report and Order and Further NPRM, paras. 77-78.

section with respect to the specific equipment or service in question; (2) the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies; (3) the type of operations of the manufacturer or provider; and (4) the extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.<sup>55</sup>

13. Compliance Deadlines. We continue to require the same compliance deadlines for the usability and information, documentation, and training requirements that the Commission adopted in the Report and Order for rules to ensure the accessibility of user interfaces and video programming guides and menus under Sections 204 and 205.<sup>56</sup> We decline to provide additional time for entities to come into compliance with the usability requirements for Section 204 devices and the information, documentation, and training requirements for Section 204 and 205 devices adopted herein.<sup>57</sup> With the exception of ACA, no commenter requested additional time to come into compliance with these requirements. ACA requests that small- and medium-sized cable operators receive an extended deadline to come into compliance with any information, documentation, and training requirements imposed on Section 205 entities.<sup>58</sup> ACA contends that such operators “would likely lack the legal, technical, or financial ability to incorporate the [information, documentation, and training] requirements,” and, therefore, the Commission should provide them with an extended compliance deadline to alleviate these burdens.<sup>59</sup> While

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<sup>55</sup> Id. at para. 77; 47 CFR 79.107(c)(2)(i)-(iv), 79.108(c)(2)(i)-(iv).

<sup>56</sup> Covered entities must comply with these rules by December 20, 2016, subject to certain exceptions. See 47 CFR 79.107(b), 79.108(b), 79.109(c). See also Report and Order and Further NPRM, paras. 111-19.

<sup>57</sup> See 47 CFR 79.107(b), 79.108(b).

<sup>58</sup> See ACA Reply at 3-5.

<sup>59</sup> Id. at 4-5.

we agree that providing some relief to small- and mid-sized operators is reasonable, we note that the Commission in the Report and Order already delayed the time by which mid-sized and smaller MVPD operators and small MVPD systems must comply with the requirements of Section 205 by two years.<sup>60</sup> We believe that the delay already afforded to certain mid-sized and smaller MVPD operators and small MVPD systems will provide sufficient time in which to implement the information, documentation, and training requirements adopted herein.

## **B. Notifications**

### **1. Equipment Manufacturer Notifications under Sections 204 and 205**

14. We adopt the Further NPRM's tentative conclusion to require manufacturers of navigation devices subject to Section 205 to inform consumers about the availability of audibly accessible devices and accessibility solutions.<sup>61</sup> Specifically, consistent with our proposal in the Further NPRM, we require manufacturers subject to Section 205 to prominently display information about audibly accessible devices and other accessibility solutions on their official websites.<sup>62</sup> We also adopt a similar notification requirement for manufacturers of digital apparatus that are subject to Section 204. However, we decline to adopt labeling requirements or other point of sale notifications for either Section 205 navigation devices or Section 204 digital apparatus.

15. Pursuant to Section 205(b)(1) of the CVAA, we require equipment manufacturers

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<sup>60</sup> See 47 CFR 79.108(b); Report and Order and Further NPRM, paras. 114-19. Specifically, (1) MVPD operators with 400,000 or fewer subscribers as of year-end 2012; and (2) MVPD systems with 20,000 or fewer subscribers that are not affiliated with an operator serving more than 10 percent of all MVPD subscribers as of year-end 2012, were afforded with a two-year delay of the compliance deadline. Id. These MVPDs must be in compliance with the rules by December 20, 2018. The Commission also committed to undertake a review of the marketplace after the December 20, 2016 compliance deadline for larger MVPDs to consider whether the delayed compliance deadline should be retained or extended (in whole or in part). Report and Order and Further NPRM, para. 114.

<sup>61</sup> See Report and Order and Further NPRM, para. 150. We note that the deadlines adopted in the Report and Order apply to the notification requirements adopted herein. See 47 CFR 79.107(b), 79.108(b). No commenter requested additional time to come into compliance with these requirements.

<sup>62</sup> Report and Order and Further NPRM, para. 150.

subject to Section 205 to inform consumers about the availability of audibly accessible devices and accessibility solutions by prominently displaying accessibility information on their official websites, such as through a link on their home page.<sup>63</sup> Our rules currently require MVPDs to notify consumers that navigation devices with the required accessibility features are available to consumers who are blind or visually impaired upon request, and, as part of these requirements, MVPDs must provide notice on their official websites about the availability of accessible navigation devices.<sup>64</sup> In the Further NPRM, we inquired whether to impose similar requirements on manufacturers of navigation devices.<sup>65</sup> Among the few commenters who addressed website notifications for manufacturers subject to Section 205, there appears to be general agreement that, at a minimum, equipment manufacturers should be required to prominently provide information about the availability of accessible devices on their websites.<sup>66</sup> Further, we adopt our proposal in the Further NPRM to require manufacturers to convey through the website notice the means of making requests for accessible equipment and the specific person, office, or entity to which such requests are to be made.<sup>67</sup> Because Section 205 allows covered entities to distribute accessible navigation devices “upon request” to blind and visually impaired individuals,<sup>68</sup> we find that, similar to the requirement for MVPDs,<sup>69</sup> the website notice provided by navigation device manufacturers must provide information on how individuals who are blind or visually impaired can request accessible equipment, as well as the specific person, office, or entity to which such requests are to be made. Although the website is required to contain

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<sup>63</sup> See id.

<sup>64</sup> 47 CFR 79.108(d)(1)-(2).

<sup>65</sup> See Report and Order and Further NPRM, para. 150.

<sup>66</sup> See CEA Comments at 9-10; CEA Reply at 6-7; Consumer/Academic Groups Comments at 12; Reply Comments of Montgomery County, Maryland at 35 (“Montgomery County Reply”) (arguing that website notifications may be a component of increasing consumer awareness of accessible devices, but should not be considered an “all-encompassing solution”).

<sup>67</sup> See Report and Order and Further NPRM, para. 150.

<sup>68</sup> 47 U.S.C. 303(bb)(1).

<sup>69</sup> See 47 CFR 79.108(d)(2); Report and Order and Further NPRM, para. 134.



information only about the availability of accessible devices and the means for making requests for such equipment, the contact office or person listed on the website must be able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features.<sup>70</sup> In addition, as is required for MVPD website notices, the information required herein by navigation device manufacturers must be provided in a website format that is accessible to individuals with disabilities.<sup>71</sup>

16. Device manufacturers that produce Section 204 digital apparatus will also be required to provide prominent notification about the availability of accessible devices on their official websites as is required for Section 205 navigation devices. In the Further NPRM, we sought comment on whether to impose notification requirements on equipment manufacturers subject to Section 204 to ensure that consumers with disabilities are informed about which products contain the required accessibility features and, more specifically, whether we should require manufacturers to prominently display information about the availability of accessible devices and about which products contain the required accessibility features on their official websites, such as through a link on their home pages, and whether we should require a point of contact who can answer consumer questions about which products contain the required

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<sup>70</sup> See Consumer/Academic Groups Comments at 13 (“Too often have deaf and hard of hearing customers reached out to customer service representatives asking how to access the closed captioning features on products and encountered puzzled customer service representatives.”); Consumer/Academic Groups Reply at 5 (“[C]onsumers have told us that the sales people in stores as well as customer support people over the phone often are unfamiliar with the closed captioning features on their products.”); Wireless RERC Reply at 4-5 (“[C]ustomer service is central to providing information to people who have vision loss, as oftentimes the online and print information is not consistently accessible. . . . The common theme was that customer support agents simply did not have the required expertise to address specific inquiries made by people with disabilities, hence support was inadequate.”).

<sup>71</sup> See 47 CFR 79.108(d)(2).

accessibility features.<sup>72</sup> Consumer/Academic Groups support adopting a website notification requirement for both digital apparatus and navigation devices, recognizing that “access is not possible if those who need the access are not aware of its availability.”<sup>73</sup> We agree and therefore adopt a website notification requirement for equipment manufacturers subject to Section 204. Just as we require for Section 205 manufacturers, the contact office or person listed on the website must be able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features.

17. We disagree with CEA’s contention that adopting the definition of “usable” for Section 204 devices obviates the need for any additional notification requirements for digital apparatus.<sup>74</sup> Rather, we find that a website notification requirement will be minimally burdensome and may enhance manufacturers’ efforts to comply with the usability requirement. Specifically, although not required, digital apparatus manufacturers may choose to use the notification portion of their website to include additional information about accessibility features.

18. We decline to impose labeling requirements or other point of sale notifications for navigation devices or digital apparatus at this time, but we emphasize that entities covered by Sections 204 and 205 of the CVAA are required to provide information about the accessibility features of devices, including information about how to access closed captioning controls and

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<sup>72</sup> Report and Order and Further NPRM, para. 152.

<sup>73</sup> Consumer/Academic Groups Comments at 11.

<sup>74</sup> CEA Comments at 10 (“In fact, there is no need to impose notification requirements on manufacturers of digital apparatus if the Commission adopts the definition of ‘usable.’ . . . Doing so would ensure that information is available to consumers regarding the accessibility features of digital apparatus, without the need for additional notification requirements.”); CEA Reply at 7 (“Because Section 204 applies to all of these devices, relying on the existing definition of ‘usable’ in the Section 204 context will ensure that information is available to consumers regarding the accessibility features of digital apparatus, without the need for specific, and burdensome, labeling or other notification requirements.”).

settings, as part of the information, documentation, and training requirements that we adopt herein. The Further NPRM sought comment regarding what notification, if any, should be required at the point of sale for consumers that wish to purchase accessible Section 205 or Section 204 devices at retail, such as a labeling requirement to identify accessible devices.<sup>75</sup> Comments regarding point of sale notifications focused almost exclusively on whether the Commission should adopt a product labeling requirement. Consumer/Academic Groups support a labeling requirement for both navigation devices and digital apparatus that would inform consumers at the point of sale about product accessibility, including a notice on the packaging that “explain[s] how to access the closed captioning control as well as display settings.”<sup>76</sup> Consumer/Academic Groups also contend that manufacturers should be required to provide “step-by-step instructions with pictures explaining how to access the closed captioning features” either inside the packaging or on the packaging.<sup>77</sup> CEA, the Entertainment Software Association (“ESA”), and the Telecommunications Industry Association (“TIA”) strongly oppose any labeling requirement for digital apparatus or navigation devices.<sup>78</sup> For example, CEA argues that manufacturers should be able to work with retailers, without regulation, to determine how point of sale notifications should work and that manufacturers already have incentives to provide all necessary information to ensure that consumers know how to operate their devices.<sup>79</sup>

19. We agree with Consumer/Academic Groups that it is important that consumers with disabilities be provided with information about the accessibility features of digital apparatus

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<sup>75</sup> Report and Order and Further NPRM, paras. 151-52.

<sup>76</sup> Consumer/Academic Groups Comments at 13.

<sup>77</sup> Id.

<sup>78</sup> See CEA Comments at 10-11; CEA Reply at 7-8; Reply Comments of the Entertainment Software Association at 5 (“ESA Reply”); Reply Comments of the Telecommunications Industry Association at 2-3 (“TIA Reply”).

<sup>79</sup> See CEA Comments at 10-11; CEA Reply at 7-8. In addition, ESA and TIA argue that Consumer/Academic Groups’ proposal to include explanations and instructions on the packaging would be difficult to implement and that, in any event, packaging labels are not accessible to those who are blind or visually impaired. ESA Reply at 5; TIA Reply at 2-3. See also CEA Reply at 8. TIA submits that the most logical place for instructions is not a packaging label but the product’s manual or help guide. TIA Reply at 3.

and navigation devices. The Section 6.3(l) usability and Section 6.11 information and documentation requirements adopted by the Commission here require covered entities to provide consumers with such information. Pursuant to the usability requirements we adopt here, manufacturers subject to Section 204 of the CVAA must provide access to information and documentation on the full functionalities of digital apparatus, including instructions, product information (including accessible feature information), documentation, bills and technical support.<sup>80</sup> Further, as part of the information and documentation requirements we adopt here, entities subject to both Section 204 and Section 205 of the CVAA must provide access to information and documentation, including installation guides and product support communications, and, in particular, must provide a description of the accessibility and compatibility features of the product upon request, including, as needed, in alternate formats or alternate modes at no additional charge.<sup>81</sup> Thus, covered entities will be required to provide the information about product accessibility features, including information on how to access closed captioning features and display settings, and such information must be provided in accessible formats, but it will not need to be included on a label.<sup>82</sup> As industry gains experience with the informational requirements, we may revisit our rules in the future to ensure that consumers are receiving information as intended by the statute.

20. Consumer/Academic Groups support requiring manufacturers to provide not just

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<sup>80</sup> 47 CFR 6.3(l) (emphasis added). We interpret this requirement to mean that, if a manufacturer generally provides instructions or a user manual with its product, such instructions or user manual shall include information and instructions on how to use accessibility features. We also interpret this requirement to mean that, even if a manufacturer does not routinely provide instructions or a user manual with its product, it still must provide product information and instructions on how to use accessibility features in an accessible format upon request to consumers with disabilities.

<sup>81</sup> *Id.* § 6.11(a)(1)-(2) (emphasis added). As noted above, if a consumer with a disability requests an accessible navigation device pursuant to Section 205, this also constitutes a request for a description of the accessibility features of the device and end-user product documentation in accessible formats.

<sup>82</sup> Such formats include picture instructions for individuals who are deaf and hard of hearing and Braille/audible instructions for individuals who are blind or visually impaired.

website notifications about the availability of accessible devices and the contact information for requesting accessible devices, but also website information “explaining the accessibility of their devices and how to access important accessibility features such as the closed captioning control and display settings.”<sup>83</sup> As noted above, while the information and documentation requirements that we adopt broadly outline the steps covered entities must take to ensure that persons with disabilities have access to information about accessibility features, covered entities have flexibility to implement these requirements within the guidelines set forth in the rule. Thus, we do not require that such information be posted on websites. However, we agree that providing this information on websites would be useful for consumers to be able to effectively use a device’s accessibility features and therefore encourage covered entities to provide the required information and documentation about accessibility features on their websites in a format that is accessible to individuals with disabilities. With respect to both Section 204 and 205 devices, as we state above, we require persons listed as the point of contact for requests for accessible equipment to also be able to provide information about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features.

21. In addition, Consumer/Academic Groups request a central website, similar to the Commission’s Accessibility Clearinghouse,<sup>84</sup> which would include accessibility information for all digital apparatus and navigation devices.<sup>85</sup> The Accessibility Clearinghouse was set up for equipment subject to Sections 255, 716, and 718 of the Act, namely telecommunications

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<sup>83</sup> Consumer/Academic Groups Comments at 12.

<sup>84</sup> Established pursuant to Section 717(d) of the Act, the Accessibility Clearinghouse is “a clearinghouse of information on the availability of accessible products and services and accessibility solutions required under sections 255, 617, and 619.” 47 U.S.C. 618(d). The information is made publicly available on the Commission’s website and includes an annually updated list of products and services with accessibility features. *Id.* The Accessibility Clearinghouse can be accessed at <http://ach.fcc.gov/>.

<sup>85</sup> See Consumer/Academic Groups Comments at 12.

equipment, advanced communications services equipment, and Internet browsers on mobile phones, pursuant to a Congressional mandate within the CVAA,<sup>86</sup> and we note that Congress did not mandate a similar website for equipment subject to Sections 204 and 205. Nevertheless, we find that consumers would benefit from this information being included within the framework of the already established Accessibility Clearinghouse. To date, the Accessibility Clearinghouse largely relies on manufacturers to update their product information on wireless communication technologies.<sup>87</sup> A similar commitment by CEA, NCTA, and their memberships that could enable the inclusion and updating of information about accessible digital apparatus and navigation devices within the Accessibility Clearinghouse would be useful to consumers. Therefore, we encourage CEA and NCTA to coordinate with the Consumer and Governmental Affairs Bureau (“CGB”) to determine the feasibility of including information about the accessibility of digital apparatus and navigation devices within the current Accessibility Clearinghouse. We recommend that such coordination take place with CGB well before the December 20, 2016 compliance deadline for our digital apparatus and navigation device accessibility requirements.

## **2. MVPD Notifications under Section 205**

22. Just as we require for manufacturers of Section 204 and 205 devices, we require MVPDs to ensure that the contact office or person listed on their website is able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can

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<sup>86</sup> See Pub. L. 111-260, sec. 104.

<sup>87</sup> See Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, CG Docket No. 10-213, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, DA 12-1602, 27 FCC Rcd 12204, para. 91, n. 258 (CGB 2012) (“In 2010, CTIA revamped its accessibility web site, AccessWireless.org, to better inform consumers with disabilities about the availability of accessible mobile phone options. . . . The Commission ultimately used the information contained on this new site, largely derived from the Global Accessibility Reporting Initiative (GARI) of the Mobile Manufacturers Forum, to help develop its Accessibility Clearinghouse. For more information about GARI and the Mobile Manufacturers Forum, visit <http://MobileAccessibility.info>.”).

locate information about how to activate and use accessibility features. This new requirement is in addition to the two existing notification requirements for MVPDs that the Commission adopted in the Report and Order. First, MVPDs are required to clearly and conspicuously inform consumers about the availability of accessible navigation devices whenever MVPDs provide “information about equipment options in response to a consumer inquiry about service, accessibility, or other issues.”<sup>88</sup> Second, MVPDs must provide notice on their official websites about the availability of accessible navigation devices, in a way that is both prominent and accessible to those with disabilities.<sup>89</sup> In particular, the website notice must prominently display information about accessible navigation devices in a way that makes such information available to all current and potential subscribers, and must list the specific person, office, or entity to which requests for accessible equipment are to be made.<sup>90</sup> The Further NPRM inquired as to whether additional notification requirements, such as annual notices to subscribers or required marketing efforts,<sup>91</sup> should be imposed and asked for information about the costs and benefits that might be associated with additional types of notification.<sup>92</sup>

23. MVPD commenters argue that it would be premature to impose additional notification requirements for MVPDs without first observing the efficacy of the notification requirements adopted by the Report and Order.<sup>93</sup> On the other hand, Montgomery County, Maryland (“Montgomery County”) expresses the concern that consumers will not be aware of the availability of accessible navigation devices unless MVPDs promote such availability and

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<sup>88</sup> Report and Order and Further NPRM, para. 134; 47 CFR 79.108(d)(1).

<sup>89</sup> Report and Order and Further NPRM, para. 134; 47 CFR 79.108(d)(2).

<sup>90</sup> Id.

<sup>91</sup> See Comments of Montgomery County, Maryland, MB Docket No. 12-108, at 20 (filed July 15, 2013); Reply Comments of the American Foundation for the Blind, MB Docket No. 12-108, at 8 (filed Aug. 7, 2013); Report and Order and Further NPRM, para. 148.

<sup>92</sup> Report and Order and Further NPRM, paras. 148-49.

<sup>93</sup> See Verizon Comments at 4-6; ACA Reply at 6; Reply Comments of CenturyLink at 3 (“CenturyLink Reply”); NCTA Reply at 8-9.

urges the Commission to adopt additional notification requirements including periodic announcements about accessible equipment in the program guide.<sup>94</sup> Verizon and NCTA contend that additional requirements are unnecessary because market forces will incentivize MVPDs to promote the accessible capabilities of products.<sup>95</sup> Although we do not agree that periodic announcements are necessary at this time, we conclude that MVPDs should take additional action to ensure that consumers are aware of the availability of accessible navigation devices. Specifically, we require that the contact office or person listed on an MVPD's website must be able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features. We believe that this additional obligation, along with the notification requirements adopted in the Report and Order, will ensure that all current and potential subscribers that contact an MVPD looking for information about accessible navigation devices will be provided with information about accessible equipment options.<sup>96</sup> Moreover, we believe that the incremental cost, if any, of implementing this requirement is slight and the potential benefit in assisting consumers is great.<sup>97</sup>

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<sup>94</sup> Montgomery County Reply at 34-35. Montgomery County expresses concern that website notifications by MVPDs will not be sufficient as they claim that the disability community has a low rate of broadband adoption and usage and website information may not be accessible. Id. at 35. We note that our notification rules for MVPDs are not limited to website notifications. MVPDs must provide clear and conspicuous information to consumers about the availability of accessible navigation devices whenever MVPDs provide information about equipment options in response to a consumer inquiry about service, accessibility, or other issues. 47 CFR 79.108(d)(1). MVPDs are also required to ensure that the information on their website about the availability of accessible devices is provided in a Web site format that is accessible to people with disabilities. Id. § 79.108(d)(2).

<sup>95</sup> See Verizon Comments at 5; NCTA Reply at 9. We note that Comcast is conducting outreach on accessible user interfaces, program guides, and menus, and as part of those outreach efforts, Comcast has shown a commercial introducing its talking guide that aired on television during prime time. See Comcast, Explore Emily's Oz, available at <http://www.comcast.com/emilysoz>; Comcast, Accessibility, Talking Guide + Video Description, available at <http://www.comcast.com/accessibility>.

<sup>96</sup> See Report and Order and Further NPRM, para. 134; 47 CFR 79.108(d)(2).

<sup>97</sup> Because the contact person designated by the MVPD is already required to accept requests for accessible equipment, we do not believe it would be a significant added burden for the contact person to also be able to answer questions about the availability of accessible equipment. In addition, it would be a benefit for consumers with disabilities who are looking to acquire accessible equipment to be able to obtain information about accessible equipment options from a single, centralized source.



In the event that information is brought to our attention demonstrating that the MVPD notification requirements adopted in the Report and Order and herein have proven insufficient to inform consumers about the availability of accessible equipment, the Commission may revisit this issue.<sup>98</sup>

### **3. Program Information for PEG Channels**

24. We decline to adopt a requirement that MVPDs include more detailed program information for public, educational, and governmental (“PEG”) channels in their video programming guides. In the Further NPRM, we sought comment on possible sources of authority for requiring MVPDs to ensure that video programming guides and menus that provide channel and program information include “high level channel and program descriptions and titles, as well as a symbol identifying the programs with accessibility options (captioning and video description).”<sup>99</sup> The Alliance for Communications Democracy (“ACD”) and Montgomery County contend that the Commission has authority to adopt such a requirement pursuant to Section 205 of the CVAA, which requires that “on-screen text menus and guides provided by navigation devices . . . for the display or selection of multichannel video programming [be made] audibly accessible in real-time upon request by individuals who are blind or visually impaired.”<sup>100</sup> According to ACD, the Commission can require MVPDs to include certain program information in program guides as part of implementing regulations that construe the terms “on-screen guide” and “audibly accessible in real-time . . . by individuals who are blind or visually impaired.”<sup>101</sup> NCTA, DISH/EchoStar, Verizon, CenturyLink, and ACA argue that the

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<sup>98</sup> For the same reasons, we reject Montgomery County’s proposal to require that MVPDs report to the Commission their accessibility equipment promotion efforts and the rates for accessible equipment. See Montgomery County Reply at 35.

<sup>99</sup> Report and Order and Further NPRM, para. 144 (citation omitted).

<sup>100</sup> See 47 U.S.C. 303(bb)(1); Comments of the Alliance for Communications Democracy at 4-5 (“ACD Comments”); Montgomery County Reply at 13-22.

<sup>101</sup> See ACD Comments at 4-5.

Commission does not have authority to impose such a requirement.<sup>102</sup>

25. We find that requiring MVPDs to include particular information in program guides is beyond the scope of Section 205 of the CVAA. In particular, we disagree with ACD's and Montgomery County's argument that the requirement to make on-screen text menus and guides on navigation devices audibly accessible gives the Commission authority to determine whether the substantive information provided in program guides is adequate and to require that particular information be included. As we stated in the Report and Order, while Section 205 of the CVAA requires that on-screen text menus and guides provided by navigation devices for the display or selection of multichannel video programming be made audibly accessible, it does not govern the underlying content in the menus and guides.<sup>103</sup> As noted in the Report and Order, we encourage MVPDs to provide more detailed information in their program guides for PEG programs when such information is provided by PEG providers and when it is technically feasible.<sup>104</sup>

#### IV. ORDER ON RECONSIDERATION

26. In response to Consumer/Academic Groups Petition,<sup>105</sup> we reconsider guidance

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<sup>102</sup> See NCTA Comments at 2-4; DISH/EchoStar Comments at 7-8; Verizon Comments at 8-10; ACA Reply at 8-9; CenturyLink Reply at 3; NCTA Reply at 2-4.

<sup>103</sup> Report and Order and Further NPRM, para. 75 (“In other words, this section requires that if there is text in a menu or program guide on the screen, then that text must be audibly accessible, but it does not impose requirements with regard to what substantive information must appear in the on-screen text.”) (emphasis in original).

<sup>104</sup> Id. at para. 75. We note that there is a separate, pending proceeding with a record that specifically addresses these issues. See Petition for Declaratory Ruling of The Alliance for Community Media, et al., that AT&T's Method of Delivering Public, Educational and Government Access Channels Over Its U-Verse System is Contrary to the Communications Act of 1934, as Amended, and Applicable Commission Rules, MB Docket No. 09-13.

<sup>105</sup> The Consumer/Academic Groups Petition urges the Commission to “reconsider allowing voice commands and gestures as compliant mechanisms for activating the closed captioning or accessibility features.” Consumer/Academic Groups Petition at 2. Consumer/Academic Groups argue that “providing voice or gesture controls is acceptable only where there is also a way for people who are deaf or hard of hearing to access the accessibility features through a mechanism that is reasonably comparable to a button, key, or icon.” Reply to Petition for Reconsideration Oppositions of the National Association of the Deaf, Telecommunications for the Deaf and Hard of Hearing, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Association of Late-Deafened Adults, Inc., Hearing Loss Association of America, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Cerebral Palsy and Deaf Organization, Technology Access Program Gallaudet University, filed Feb. 25, 2014, at 3 (“Consumer/Academic Groups Reply to Oppositions”). CEA, ESA, NCTA, and TIA all filed oppositions

we provided in the Report and Order concerning which activation mechanisms are “reasonably comparable to a button, key or icon”<sup>106</sup> as required under the CVAA<sup>107</sup> and our implementing rules.<sup>108</sup> First, we find on reconsideration that closed captioning activation mechanisms that rely solely on voice control will not fulfill the requirement that a closed captioning activation mechanism be reasonably comparable to a button, key, or icon. However, as explained more fully below, we do not prohibit the use of voice controls to activate closed captioning as long as there is an alternative closed captioning activation mechanism that is simple and easy to use for deaf and hard of hearing individuals.<sup>109</sup> Second, we reaffirm our finding in the Report and Order that captioning and video description activation mechanisms that rely on gesture control will be considered compliant with the requirements of our rules implementing Sections 204 and 205 if the gesture activation mechanism is simple and easy to use.

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to the Consumer/Academic Groups Petition, arguing that the Commission correctly decided that voice and gesture controls are compliant mechanisms reasonably comparable to a button, key, or icon for activating closed captioning and video description. See Opposition of the Consumer Electronics Association, filed Feb. 18, 2014 (“CEA Opposition”); Opposition of the Entertainment Software Association, filed Feb. 18, 2014 (“ESA Opposition”); Opposition of the National Cable & Telecommunications Association, filed Feb. 18, 2014 (“NCTA Opposition”); Opposition of the Telecommunications Industry Association, filed Feb. 14, 2014 (“TIA Opposition”).

<sup>106</sup> Report and Order and Further NPRM, para. 81 (“Although we codify the statutory language that requires a mechanism reasonably comparable to a button, key, or icon to activate certain accessibility features and reject a single step requirement, we believe it is useful to provide guidance to covered entities as to what ‘reasonably comparable to a button, key, or icon’ means.”); id. at para. 81 (“To provide some clarity to covered entities, we provide some examples of mechanisms that we consider to be . . . reasonably comparable to a button, key, or icon. For example, we believe that compliant mechanisms include, but are not limited to, the following: a dedicated button, key, or icon; voice commands; gestures; and a single step activation from the same location as the volume controls.”).

<sup>107</sup> Section 303(aa)(3) of the Act requires digital apparatus covered by Section 204 of the CVAA to provide “built in access to [] closed captioning and video description features through a mechanism that is reasonably comparable to a button, key, or icon designated for activating the closed captioning or accessibility features.” 47 U.S.C. 303(aa)(3) (emphasis added). Similarly, Section 303(bb)(2) requires “navigation devices with built-in closed captioning capability” covered by Section 205 of the CVAA to provide “access to that capability through a mechanism [that] is reasonably comparable to a button, key, or icon designated for activating the closed captioning, or accessibility features.” 47 U.S.C. 303(bb)(2) (emphasis added).

<sup>108</sup> See 47 CFR 79.109(a)(1)-(2), 79.109(b).

<sup>109</sup> Report and Order and Further NPRM, para. 81 (“In determining whether an activation mechanism is reasonably comparable to a button, key, or icon, the Commission will consider the simplicity and ease of use of the mechanism.”).

**A. Activation of Closed Captioning by Voice Control**

27. On reconsideration, we find that closed captioning activation mechanisms that rely solely on voice control will not fulfill the requirement of our rules implementing Sections 204 and 205, which mandate a closed captioning activation mechanism reasonably comparable to a button, key, or icon.<sup>110</sup> The Report and Order stated that, “[i]n determining whether an activation mechanism is reasonably comparable to a button, key, or icon, the Commission will consider the simplicity and ease of use of the mechanism.”<sup>111</sup> As the Commission explained, “[w]e believe this approach is consistent with Congress’s intent ‘to ensure ready access to these features by persons with disabilities,’ while still giving covered entities the flexibility contemplated by the statute.”<sup>112</sup> Among the examples given by the Commission for compliant activation mechanisms were both voice and gesture activation.<sup>113</sup> Specifically, the Commission stated “that compliant mechanisms include, but are not limited to, the following: a dedicated button, key, or icon; voice commands; gestures; and a single step activation from the same location as the volume controls.”<sup>114</sup>

28. The Consumer/Academic Groups Petition submits that “many” deaf and hard of hearing people, especially those who communicate using American Sign Language, “do not speak or speak clearly enough to use speech recognition technology.”<sup>115</sup> As a result, Consumer/Academic Groups contend that the use of voice controls to activate closed captioning “will effectively deny millions of deaf and hard of hearing people access to closed captioning

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<sup>110</sup> See 47 CFR 79.109(a)(1), 79.109(b).

<sup>111</sup> Report and Order and Further NPRM, para. 81.

<sup>112</sup> Id. para. 81, citing H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 31 (2010); S. Rep. No. 111-386, 111th Cong., 2d Sess. at 14 (2010).

<sup>113</sup> Report and Order and Further NPRM, para. 81.

<sup>114</sup> Id.

<sup>115</sup> Consumer/Academic Groups Petition at 3.

and/or other accessibility features.”<sup>116</sup> Upon further review, we agree that voice activation would not be simple and easy to use for many individuals who are deaf and hard of hearing and, thus, should not be considered reasonably comparable to a button, key, or icon for activating closed captioning. Therefore, the use of voice activation for closed captioning, without an alternative closed captioning activation mechanism that is simple and easy to use for individuals who are deaf and hard of hearing, does not satisfy the obligation under Section 79.109(a)(1) and (b) of our rules and Sections 204 and 205 of the CVAA to provide a mechanism reasonably comparable to a button, key, or icon.<sup>117</sup>

29. While some opposing the Consumer/Academic Groups Petition express concern about the Commission prohibiting the use of voice controls to achieve accessibility,<sup>118</sup> we emphasize that this Order does not prohibit use of voice controls to activate closed captioning as long as there is an alternative closed captioning activation mechanism that is simple and easy to use for the many deaf and hard of hearing individuals who cannot use their voices to activate this accessibility feature. NCTA and TIA both submit that voice control is likely to be only one method for activating accessibility features,<sup>119</sup> and it is not our intent to prevent manufacturers from offering multiple avenues of accessibility. Rather, we find that solely providing a voice activation mechanism for closed captioning would not fulfill the MVPD’s or manufacturer’s obligation to provide an activation mechanism “reasonably comparable to a button, key, or icon” under our rules and Sections 204 and 205 of the CVAA.<sup>120</sup>

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<sup>116</sup> Id. at 4.

<sup>117</sup> See Consumer/Academic Groups Reply to Oppositions at 3.

<sup>118</sup> See CEA Opposition at 4; NCTA Opposition at 7; TIA Opposition at 2-3, 5.

<sup>119</sup> See NCTA Opposition at 7; TIA Opposition at 5.

<sup>120</sup> CEA and ESA point out the potential benefits of voice activation for those who are blind or visually impaired. See CEA Opposition at 4; ESA Opposition at 2. We note that the Order does not prohibit the use of simple and easy to use voice controls as the sole mechanism of activating video description.

## **B. Activation of Closed Captioning and Video Description by Gesture Control**

30. With respect to gesture control, we decline to reconsider our finding that gesture control that is simple and easy to use will be considered a compliant activation mechanism for closed captioning and video description under Sections 204 and 205.<sup>121</sup> The Consumer/Academic Groups Petition argues that gesture control should not be considered a compliant closed captioning activation mechanism, because some deaf people may have mobility disabilities that prevent them from using gestures.<sup>122</sup> Consumer/Academic Groups also note that they “are seriously concerned about the ability of blind and visually impaired people to access critical accessibility features through gestures.”<sup>123</sup> In response, CEA points out that the use of a button, key, or icon as an activation mechanism, clearly permissible under Sections 204 and 205, would be difficult for some individuals with disabilities such as “limited manual dexterity, limited reach or strength, or prosthetic devices.”<sup>124</sup> Sections 204 and 205 require that the activation mechanism be “reasonably comparable to a button, key, or icon,”<sup>125</sup> and we find that

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<sup>121</sup> Contrary to Petitioners’ argument, see Consumer/Academic Groups Petition at 4-5, the parties were on notice that we would consider in this proceeding whether gesture controls satisfy the requirement for activation mechanisms that are “reasonably comparable to a button, key, or icon.” The NPRM asked for comment on whether we should require single step activation, and provided examples of gesture activation that we would consider, such as “pressing” or “clicking” a button, key, or icon. See NPRM, para. 43 (seeking comment about single step activation, that is “users would be able to activate closed captioning features on an MVPD-provided navigation device or other digital apparatus immediately in a single step just as a button, key, or icon can be pressed or clicked in a single step”). Indeed, four commenters addressed gesture activation in their comments submitted in response to the NPRM. See Comments of the Consumer Electronics Association at 20 (“Even more significantly, some devices do not include any buttons but instead rely on voice or gesture recognition to activate and deactivate certain features, which for some users may be better accessibility solutions than a designated physical button.”); Comments of DIRECTV, LLC at 9 (“Thus, a user could access this [closed captioning] functionality by simultaneously pressing two specified keys on the remote control. Alternatively, the user could shake a hand-held device or swipe her fingers across a touchscreen device, interact with a device that responds to voice commands, or even interact with a device that detects motion patterns.”); Comments of the Information Technology Industry Council at 7 (“[S]ome devices do not have buttons at all, but rather, rely either on touch interfaces, gestures or voice commands.”); Comments of the National Cable & Telecommunications Association at 14-15 (“[O]perators may eventually deploy devices with gesture recognition that will revolutionize accessibility.”). All comments above were filed July 15, 2013 in MB Docket No. 12-108.

<sup>122</sup> Consumer/Academic Groups Petition at 4.

<sup>123</sup> Id.

<sup>124</sup> CEA Opposition at 5.

<sup>125</sup> 47 U.S.C. 303(aa)(3), 303(bb)(2).

the Commission’s interpretation of the phrase “reasonably comparable to a button, key, or icon” in the Report and Order to mean a mechanism that is simple and easy to use was both a reasonable and supportable interpretation of the language used by Congress.<sup>126</sup> Furthermore, we find that a gesture control that is simple and easy to use complies with the requirements under Section 204 or 205 to provide an activation mechanism reasonably comparable to a button, key, or icon.

31. Industry commenters contend that gestures are likely to be one of multiple methods for activating accessibility features,<sup>127</sup> and we agree that manufacturers should have the flexibility to offer multiple avenues of accessibility. We encourage covered entities to provide alternatives for the consumer, so that the consumer can choose the disability solution that works best based upon his or her need. While manufacturers have flexibility in their selection of a mechanism that is comparable to a button, key, or icon, we strongly recommend that they consult with consumers with disabilities about the method(s) they select to activate closed captions and video description, to ensure that these achieve Congress’s goal of facilitating access to such accessibility features. For example, the Commission previously recognized that some individuals with hearing loss also have other disabilities.<sup>128</sup> This is particularly true of older Americans who may have lost, or be in the process of losing, some of their sight or hand/eye coordination. For such persons, some gesture controls may not be “simple and easy to use.” Providing multiple means to access captions and video description will undoubtedly result in reaching a larger portion of the deaf and hard of hearing and blind or visually impaired

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<sup>126</sup> Report and Order and Further NPRM, para. 81.

<sup>127</sup> See NCTA Opposition at 7; TIA Opposition at 5.

<sup>128</sup> For example, the Commission has stated that captions can benefit Americans with hearing disabilities who also have a visual disability. Closed Captioning Requirements for Digital Television Receivers; Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, ET Docket No. 99-254, MM Docket No. 95-176, Report and Order, 65 FR 58467, para. 10 (2000) (“DTV Closed Captioning Order”).

populations, a goal that the Commission previously has stated is in keeping with Congressional intent.<sup>129</sup>

## **V. PROCEDURAL MATTERS**

### **A. Final Regulatory Flexibility Act**

32. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”), an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the Further Notice of Proposed Rulemaking (“FNPRM”) in this proceeding. The Federal Communications Commission (“Commission”) sought written public comment on the proposals in the FNPRM, including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (“FRFA”) conforms to the RFA.

#### **1. Need for, and Objectives of, the Report and Order**

33. Pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), the Second Report and Order adopts additional rules requiring the accessibility of user interfaces on digital apparatus and navigation devices used to view video programming for individuals with disabilities. The rules we adopt here will effectuate Congress’s goals in enacting Sections 204 and 205 of the CVAA by enabling individuals who are blind or visually impaired to more easily access video programming on a range of video devices, and enabling consumers who are deaf and hard of hearing to more easily activate closed captioning on video devices. Specifically, the Second Report and Order adopts rules requiring manufacturers of Section 204 digital apparatus to ensure that both the “appropriate built-in apparatus functions” and the “on-screen text menus or other visual indicators built in to the

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<sup>129</sup> See *id.* at para. 13, in which the Commission, in adopting requirements for captioning display standards, stated that “[o]nly by requiring decoders to respond to these various features can we ensure that closed captioning will be accessible for the greatest number of persons who are deaf and hard of hearing, and thereby achieve Congress’ vision that to the fullest extent made possible by technology, people who are deaf or hard of hearing have equal access to the television medium.”



digital apparatus” to access such functions be “usable by individuals who are blind or visually impaired.” In addition, the Second Report and Order adopts information, documentation, and training requirements comparable to those in Section 6.11 of our rules for entities covered by both Section 204 and Section 205 of the CVAA. Further, the Second Report and Order adopts consumer notification requirements for equipment manufacturers of digital apparatus and navigation devices that will require manufacturers to publicize the availability of accessible devices on manufacturer websites that must be accessible to those with disabilities. While multichannel video programming distributors (“MVPDs”) are already subject to website notification requirements pursuant to the rules the Commission adopted in the Report and Order, the Second Report and Order also requires MVPDs, as well as manufacturers, to ensure that the contact office or person listed on their website is able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features. The regulations adopted herein further the purpose of the CVAA to “update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.”

34. Legal Basis. The authority for the action taken in this rulemaking is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-260, 124 Stat. 2751, and Sections 4(i), 4(j), 303(aa), 303(bb), and 716(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(aa), 303(bb), and 617(g).

## **2. Summary of Significant Issues Raised in Response to the IRFA**

35. No comments were filed in response to the IRFA.

36. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

### **3. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

37. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted in the Second Report and Order. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Small entities that are directly affected by the rules adopted in the Second Report and Order include manufacturers of digital apparatus and navigation devices and MVPDs.

38. Cable Television Distribution Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities

may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.” The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

39. Cable Companies and Systems. The Commission has also developed its own small business size standards for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide. Industry data shows that there were 1,141 cable companies at the end of June 2012. Of this total, all but 10 incumbent cable companies are small under this size standard. In addition, under the Commission’s rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

40. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross

annual revenues in the aggregate exceed \$250,000,000.” There are approximately 56.4 million incumbent cable video subscribers in the United States today. Accordingly, an operator serving fewer than 564,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that all but 10 incumbent cable operators are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

41. Direct Broadcast Satellite (DBS) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS, by exception, is now included in the SBA’s broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other Program Distribution.” The definition of Cable and Other Program Distribution provided that a small

entity is one with \$12.5 million or less in annual receipts. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network. Each currently offer subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

42. Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs). SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small.

43. Home Satellite Dish (HSD) Service. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming

purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

44. Open Video Services. The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational.

Thus, again, at least some of the OVS operators may qualify as small entities.

45. Wireless cable systems – Broadband Radio Service and Educational Broadband Service. Wireless cable systems use the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86

concluded in 2009 with the sale of 61 licenses. Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

46. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services." The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses. The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small



businesses.

47. Incumbent Local Exchange Carriers (ILECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. ILECs are included in the SBA's economic census category, Wired Telecommunications Carriers. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small.

48. Small Incumbent Local Exchange Carriers. We have included small incumbent local exchange carriers in this present RFA analysis. A "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

49. Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. These entities are included in the SBA's economic census category, Wired Telecommunications Carriers. Under this category, the SBA deems a wireline business to be

small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small.

50. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.” The SBA has developed a small business size standard for this category, which is: all such businesses having 750 or fewer employees. Census data for 2007 shows that there were 939 establishments that operated for part or all of the entire year. Of those, 912 operated with fewer than 500 employees, and 27 operated with 500 or more employees. Therefore, under this size standard, the majority of such establishments can be considered small.

51. Audio and Video Equipment Manufacturing. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems.” The SBA has developed a small business size standard for this category, which is: all such businesses having 750 or fewer employees. Census data for 2007 shows that

there were 492 establishments in this category operated for part or all of the entire year. Of those, 488 operated with fewer than 500 employees, and four operated with 500 or more employees. Therefore, under this size standard, the majority of such establishments can be considered small.

#### **4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

52. In this section, we describe the reporting, recordkeeping, and other compliance requirements adopted in the Second Report and Order and consider whether small entities are affected disproportionately by these requirements.

53. Reporting Requirements. The Second Report and Order does not adopt reporting requirements.

54. Recordkeeping and Other Compliance Requirements. The Second Report and Order adopts certain recordkeeping and other compliance requirements, which are applicable to covered small entities. First, the Second Report and Order requires manufacturers of Section 204 digital apparatus to ensure that both the “appropriate built-in apparatus functions” and “on-screen text menus or other visual indicators built in to the digital apparatus” to access those functions be “usable by individuals who are blind or visually impaired.” Specifically, the Second Report and Order requires require manufacturers of Section 204 digital apparatus to ensure that individuals with disabilities have access to information and documentation on the full functionalities of digital apparatus, including instructions, product information (including accessible feature information), documentation, bills, and technical support which are provided to individuals without disabilities.

55. Second, the Second Report and Order adopts information, documentation, and

training requirements consistent with those set forth in Section 6.11 of our rules for entities covered by both Section 204 and Section 205 of the CVAA. These rules require covered entities to ensure access to information and documentation it provides to its customers, if achievable. Such information and documentation includes user guides, bills, installation guides for end-user installable devices, and product support communications, regarding both the product in general and the accessibility features of the product. In addition, the rules require covered entities to include the contact method for obtaining the required information and documentation in general product information, to consider certain accessibility-related topics when developing or modifying training programs, and to take other achievable steps, as necessary.

56. Third, the Second Report and Order imposes notification requirements for manufacturers of digital apparatus and navigation devices. Digital apparatus manufacturers must provide prominent notice on their official websites about the availability of accessible digital apparatus in a website format that is accessible to people with disabilities. The notice must publicize the availability of accessible devices and the specific person, office, or entity who can answer consumer questions about which products contain the required accessibility features. Navigation device manufacturers must also provide prominent notice on their official website about the availability of accessible navigation devices in a website format that is accessible to people with disabilities. For navigation device manufacturers, the notice must publicize the availability of accessible devices and solutions and explain the means for making requests for accessible equipment and the specific person, office, or entity to which such requests are to be made.

57. Potential for disproportionate impact on small entities. Section 204 of the CVAA requires both “the appropriate built-in apparatus functions” and “on-screen text menus or visual

indicators built in to the digital apparatus” to access those functions to be “usable by individuals who are blind or visually impaired.” The Second Report and Order adopts the definition of “usable” in Section 6.3(l) of the Commission’s rules to implement this Section 204 mandate. The definition of “usable” requires that individuals with disabilities have access to information and documentation on the full functionalities of digital apparatus, including instructions, product information (including accessible feature information), documentation, bills, and technical support which are provided to individuals without disabilities. No commenter provided information concerning the costs and administrative burdens associated with this specific compliance requirement. Nevertheless, both industry and consumer commenters supported the Commission’s application of the Section 6.3(l) “usable” definition to implement Section 204. Manufacturers must comply with the usability standard only if compliance is “achievable.” Thus, in the event that this compliance requirement disproportionately affects small entities, the Commission will have a way to minimize the impact on such entities.

58. The Second Report and Order also adopts the information, documentation, and training requirements in Section 6.11 of the Commission’s rules for Section 204 digital apparatus and Section 205 navigation devices. Specifically, the rules the Commission adopts require covered entities to ensure access to information and documentation it provides to its customers, if achievable. This includes user guides, bills, installation guides for end-user installable devices, and product support communications, regarding both the product in general and the accessibility features of the product. This requirement also considers achievability, which will allow to minimize the impact on small entities, and still further recognizes the impact on small businesses by requiring “other achievable steps” that should only be taken “as necessary.” In the record of this proceeding, the American Cable Association (“ACA”) expressed concern that the

information, documentation, and training requirements “would . . . disproportionately burden smaller cable operators who would have to produce the required accessibility support materials and training without the benefits of scale to help them to spread the costs of such initiatives over a large user base.” As such, ACA requested that small- and medium-sized cable operators receive an extended deadline to come into compliance with any information, documentation, and training requirements imposed on Section 205 entities. The Commission agrees that providing some relief to small- and mid-sized operators is reasonable. The Second Report and Order notes that the Commission in the Report and Order already delayed the time by which mid-sized and smaller MVPD operators and small MVPD systems must comply with the requirements of Section 205 by two years. Therefore, while MVPDs generally must comply with the rules adopted in the Second Report and Order by December 20, 2016, certain mid-sized and smaller MVPD operators and small MVPD systems need not comply until December 20, 2018. This delay afforded to certain mid-sized and smaller MVPD operators and small MVPD systems will provide sufficient time in which to implement the information, documentation, and training requirements adopted in the Second Report and Order. In addition, we note that covered entities, including small entities, may petition for a waiver of these requirements for good cause pursuant to the existing waiver process in Section 1.3 of our rules.

59. The Second Report and Order also imposes notification requirements for manufacturers of digital apparatus and navigation devices and MVPDs. No commenter provided information concerning the costs and administrative burdens associated with this specific compliance requirement.

## **5. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

60. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The FNPRM invited comment on issues that had the potential to have significant impact on some small entities.

61. The rules adopted in this Second Report and Order may have a significant economic impact in some cases, and that impact may affect small entities. Although the Commission has considered alternatives where possible, as directed by the RFA, to minimize economic impact on small entities, we emphasize that our action is governed by the congressional mandate contained in Sections 204 and 205 of the CVAA.

62. In formulating the final rules, however, the Commission has considered a number of methods to minimize the economic impact on small entities. With regard to the usability and information, documentation, and training requirements modeled on Sections 6.3(l) and 6.11, the Second Report and Order adopts procedures enabling the Commission to grant exemptions to the rules where a petitioner has shown that compliance is not achievable (i.e., cannot be accomplished with reasonable effort or expense). This process will allow the Commission to address the impact of the rules on individual entities, including smaller entities, on a case-by-case basis and to modify the application of the rules to accommodate individual circumstances,

which can reduce the costs of compliance for these entities. We note that two of the four statutory factors that the Commission will consider in determining achievability are particularly relevant to small entities: the nature and cost of the steps needed to meet the requirements, and the technical and economic impact on the entity's operations.

63. The Second Report and Order also adopts consumer notification requirements for manufacturers of both digital apparatus and navigation devices and MVPDs. Specifically, manufacturers are required to publicize the availability of accessible devices on their websites (which must also be accessible for those with disabilities). Both manufacturers and MVPDs must ensure that the contact office or person listed on their website is able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features. The Commission has not dictated the means by which manufacturers must comply with the requirements. Furthermore, in an attempt to simplify the notification requirements and facilitate small entity compliance, the Commission limits these requirements to websites only.

64. Further, MVPD operators with 400,000 or fewer subscribers as of year-end 2012, and MVPD systems with 20,000 or fewer subscribers that are not affiliated with an operator serving more than 10 percent of all MVPD subscribers as of year-end 2012, were afforded with a two-year delay of the compliance deadline for the requirements adopted pursuant to Section 205 of the CVAA, and this deadline also applies to the rules adopted in the Second Report and Order. The delayed compliance deadline for small MVPDs will help minimize any disproportionate impact of the requirements adopted in the Second Report and Order.

65. Overall, we believe we have appropriately considered both the interests of



individuals with disabilities and the interests of the entities who will be subject to the rules, including those that are smaller entities, consistent with Congress' goal to "update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming."

## **6. Report to Congress**

66. The Commission will send a copy of the Second Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The Second Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.

## **B. Paperwork Reduction Act**

67. The Second Report and Order contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).<sup>130</sup> The requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the Federal Register at a later date seeking these comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA),<sup>131</sup> we seek specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

## **C. Congressional Review Act**

68. The Commission will send a copy of the Second Report and Order and Order on Reconsideration in MB Docket No. 12-108 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

## **D. Ex Parte Rules**

69. We remind interested parties that this proceeding is treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules.<sup>132</sup> Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are

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<sup>130</sup> The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

<sup>131</sup> The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.). See 44 U.S.C. 3506(c)(4).

<sup>132</sup> 47 CFR 1.1200 through 1.1216.

reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

## **VI. ORDERING CLAUSES**

70. Accordingly, **IT IS ORDERED** that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-260, 124 Stat. 2751, and the authority found in Sections 4(i), 4(j), 303(r), 303(u), 303(aa), 303(bb), and 716(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 303(u), 303(aa), 303(bb), and 617(g), this Second Report and Order and Order on Reconsideration **IS ADOPTED**, effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] except for 47 CFR 79.107(a)(5), (d), and (e), 79.108(d)(2) and

(f), which shall become effective upon announcement in the Federal Register of OMB approval and an effective date of the rules.

71. **IT IS ORDERED** that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-260, 124 Stat. 2751, and the authority found in Sections 4(i), 4(j), 303(r), 303(u), 303(aa), 303(bb), and 716(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 303(u), 303(aa), 303(bb), and 617(g), the Commission's rules **ARE HEREBY AMENDED** as set forth herein.

72. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Second Report and Order and Order on Reconsideration in MB Docket No. 12-108, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

73. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this Second Report and Order and Order on Reconsideration in MB Docket No. 12-108 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

74. **IT IS FURTHER ORDERED** that Consumer/Academic Groups Petition for Reconsideration, filed January 20, 2014, is **GRANTED IN PART** and **DENIED IN PART**, to the extent provided herein.

List of Subjects in 47 CFR Part 79

Cable television operators, Communications equipment, Multichannel video programming distributors (MVPDs), Satellite television service providers.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,  
Secretary,  
Office of the Secretary.

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 79 as follows:

### PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING

1. The authority citation for part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

2. Amend § 79.107 by adding paragraphs (a)(5), (d), and (e) to read as follows:

#### **§ 79.107 User interfaces provided by digital apparatus.**

(a)(1) \*\*\*

(5) As used in this section, the term “usable” shall mean that individuals with disabilities have access to information and documentation on the full functionalities of digital apparatus, including instructions, product information (including accessible feature information), documentation, bills, and technical support which are provided to individuals without disabilities.

\* \* \* \* \*

(d)(1) Information, documentation, and training. Manufacturers of digital apparatus shall ensure access to information and documentation it provides to its customers, if achievable. Such information and documentation includes user guides, bills, installation guides for end-user installable devices, and product support communications, regarding both the product in general and the accessibility features of the product. Manufacturers shall take such other achievable steps as necessary including:

- (i) Providing a description of the accessibility and compatibility features of the product upon request, including, as needed, in alternate formats or alternate modes at no additional charge;
  - (ii) Providing end-user product documentation in alternate formats or alternate modes upon request at no additional charge; and
  - (iii) Ensuring usable customer support and technical support in the call centers and service centers which support their products at no additional charge.
- (2) Manufacturers of digital apparatus shall include in general product information the contact method for obtaining the information required by paragraph (d)(1) of this section.
- (3) In developing, or incorporating existing training programs, manufacturers of digital apparatus shall consider the following topics:
- (i) Accessibility requirements of individuals with disabilities;
  - (ii) Means of communicating with individuals with disabilities;
  - (iii) Commonly used adaptive technology used with the manufacturer's products;
  - (iv) Designing for accessibility; and
  - (v) Solutions for accessibility and compatibility.
- (e) Notices. Digital apparatus manufacturers must notify consumers that digital apparatus with the required accessibility features are available to consumers as follows: A digital apparatus manufacturer must provide notice on its official website about the availability of accessible digital apparatus. A digital apparatus manufacturer must prominently display information about accessible digital apparatus on its website in a way that makes such information available to all consumers. The notice must publicize the availability of accessible devices and the specific person, office or entity who can answer consumer questions about which products contain the required accessibility features. The contact office or person listed on the Web site must be able

to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features. All information required by this section must be provided in a website format that is accessible to people with disabilities.

3. Amend § 79.108 by revising paragraph (d) and adding paragraph (f) to read as follows:

**§ 79.108 Video programming guides and menus provided by navigation devices.**

\* \* \* \* \*

(d)(1) MVPD notices. Covered MVPDs must notify consumers that navigation devices with the required accessibility features are available to consumers who are blind or visually impaired upon request as follows:

(i) When providing information about equipment options in response to a consumer inquiry about service, accessibility, or other issues, MVPDs must clearly and conspicuously inform consumers about the availability of accessible navigation devices.

(ii) MVPDs must provide notice on their official Web sites about the availability of accessible navigation devices. MVPDs must prominently display information about accessible navigation devices and separate solutions on their Web sites in a way that makes such information available to all current and potential subscribers. The notice must publicize the availability of accessible devices and separate solutions and explain the means for making requests for accessible equipment and the specific person, office or entity to whom such requests are to be made. The contact office or person listed on the Web site must be able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing



information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features. All information required by this section must be provided in a Web site format that is accessible to people with disabilities.

(2) Manufacturer notices. Navigation device manufacturers must notify consumers that navigation devices with the required accessibility features are available to consumers who are blind or visually impaired upon request as follows: A navigation device manufacturer must provide notice on its official Web site about the availability of accessible navigation devices. A navigation device manufacturer must prominently display information about accessible navigation devices and separate solutions on its website in a way that makes such information available to all consumers. The notice must publicize the availability of accessible devices and separate solutions and explain the means for making requests for accessible equipment and the specific person, office or entity to whom such requests are to be made. The contact office or person listed on the Web site must be able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features. All information required by this section must be provided in a Web site format that is accessible to people with disabilities.

\* \* \* \* \*

(f)(1) Information, documentation, and training. MVPDs and manufacturers of navigation devices shall ensure access to information and documentation it provides to its customers, if achievable. Such information and documentation includes user guides, bills, installation guides for end-user installable devices, and product support communications, regarding both the product

in general and the accessibility features of the product. MVPDs and manufacturers of navigation devices shall take such other achievable steps as necessary including:

(i) Providing a description of the accessibility and compatibility features of the product upon request, including, as needed, in alternate formats or alternate modes at no additional charge;

(ii) Providing end-user product documentation in alternate formats or alternate modes upon request at no additional charge; and

(iii) Ensuring usable customer support and technical support in the call centers and service centers which support their products at no additional charge.

(2) MVPDs and manufacturers of navigation devices shall include in general product information the contact method for obtaining the information required by paragraph (f)(1) of this section.

(3) In developing, or incorporating existing training programs, MVPDs and manufacturers of navigation devices shall consider the following topics:

(i) Accessibility requirements of individuals with disabilities;

(ii) Means of communicating with individuals with disabilities;

(iii) Commonly used adaptive technology used with the manufacturer's products;

(iv) Designing for accessibility; and

(v) Solutions for accessibility and compatibility.

(4) If a consumer with a disability requests an accessible navigation device pursuant to Section 205, this also constitutes a request for a description of the accessibility features of the device and end-user product documentation in accessible formats.

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